

7  
8/15/01  
MA

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**BARBARA A. WILHELM,**

**CIVIL NO. 1:CV-01-1057**

**Plaintiff**

**v.**

**COMMONWEALTH OF  
PENNSYLVANIA; PENNSYLVANIA  
STATE POLICE; COL. PAUL J.  
EVANKO, COMMISSIONER;  
LT. COL. THOMAS K. COURY;  
and CPT. MICHAEL D. SIMMERS,**

**Defendants**

**FILED**  
HARRISBURG, PA

**AUG 15 2001**

MARY E. D'ANDREA, CLERK  
Per MA  
Deputy Clerk

**ORDER**


The background for this order is as follows: On June 14, 2001 Plaintiff filed a complaint in the instant action. Plaintiff served Defendants on July 20, 2001. On August 13, 2001, Plaintiff filed a motion for judgment on the pleadings, based solely on Defendant's failure to respond to the complaint within twenty days of service. However, also on August 13, 2001, Defendants filed a request for an extension of time to respond to the complaint. In an order dated August 15, 2001, the court granted Defendant's motion for an extension.

"[A] motion on the pleadings under Rule 12 (c) . . . is not the correct procedural remedy if a defendant has failed to file an answer." *General Motors Corp. v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956). Rather, Plaintiff's proper procedural remedy is default. Thus, the instant motion is inappropriate.

The court, however, construes Plaintiff's motion as a motion for entry of default under Rule 55 (a). Because Defendants were served on July 20, 2001, they were required to respond by Thursday August 9, 2001. *See Fed. R. Civ. Pro. 12*

(a)(1)(A). Defendants filed their request for extension on Monday August 13, 2001, only two days late. The Third Circuit has repeatedly emphasized that it does not favor defaults. In a close call all doubts should be resolved in favor of obtaining a decision on the merits. *Zawadaski De Bueno v. Bueno Castro*, 822 F.2d 416, 420 (3d Cir. 1987); *Farnese v. Bagnasco*, 687 F.2d 761, 764 (3d Cir. 1984); *see also Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1982)(gathering cases). The court, therefore, will not allow such a *de minimis* delay to be outcome determinative.

In accordance with the foregoing, **IT IS HEREBY ORDERED THAT** Plaintiff's motion for judgment on the pleadings is **DENIED**.

  
SYLVIA H. RAMBO  
United States District Judge

Dated: August 15, 2001.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

August 15, 2001

Re: 1:01-cv-01057 Wilhelm v. Commonwealth of PA

True and correct copies of the attached were mailed by the clerk  
to the following:

Nathan C. Pringle Jr., Esq.  
3601 N. Progress Avenue  
Suite 200  
Harrisburg, PA 17110

Susan J. Forney, Esq.  
Office of Attorney General  
Strawberry Square  
15th Floor  
Harrisburg, PA 17120

cc:		
Judge	(X )	( ) Pro Se Law Clerk
Magistrate Judge	( )	( ) INS
U.S. Marshal	( )	( ) Jury Clerk
Probation	( )	
U.S. Attorney	( )	
Atty. for Deft.	( )	
Defendant	( )	
Warden	( )	
Bureau of Prisons	( )	
Ct Reporter	( )	
Ctroom Deputy	( )	
Orig-Security	( )	
Federal Public Defender	( )	
Summons Issued	( )	with N/C attached to complt. and served by: U.S. Marshal ( ) Pltff's Attorney ( )
Standard Order 93-5	( )	
Order to Show Cause	( )	with Petition attached & mailed certified mail to: US Atty Gen ( ) PA Atty Gen ( ) DA of County ( ) Respondents ( )
Bankruptcy Court	( )	
Other _____	( )	

MARY E. D'ANDREA, Clerk

DATE: August 15th, 2001

  
Deputy Clerk